

SECOND REGULAR SESSION

# SENATE BILL NO. 1126

92ND GENERAL ASSEMBLY

---

INTRODUCED BY SENATOR RUSSELL.

Read 1st time January 22, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4122S.01I

---

## AN ACT

To repeal sections 285.300, 288.050, and 288.270, RSMo, and to enact in lieu thereof five new sections relating to employment, with penalty provisions.

---

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 285.300, 288.050, and 288.270, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 285.300, 288.050, 288.270, 288.385, and 288.395, to read as follows:

285.300. 1. Every employer doing business in the state shall require each newly hired employee to fill out a federal W-4 withholding form. A copy of each withholding form or an equivalent form containing data required by section 285.304 which may be provided in an electronic or magnetic format, shall be sent to the department of revenue by the employer within twenty days after the date the employer hires the employee or in the case of an employer transmitting a report magnetically or electronically, by two monthly transmissions, if necessary, not less than twelve days nor more than sixteen days apart. For purposes of this section, the date the employer hires the employee shall be the earlier of the date the employee signs the W-4 form or its equivalent, or the first date the employee reports to work, or performs labor or services. Such forms shall be forwarded by the department of revenue to the division of child support enforcement on a weekly basis and the information shall be entered into the database, to be known as the "State Directory of New Hires". The information reported shall be provided to the National Directory of New Hires established in 42 U.S.C. section 653, other state agencies or contractors of the division as required or allowed by federal statutes or regulations. **The division of employment security shall cross-check Missouri unemployment compensation recipients against any federal new hire database or any other database containing Missouri or other states wage**

**information which is maintained by the federal government on a monthly basis.**

2. Any employer that has employees who are employed in two or more states and transmits reports magnetically or electronically may comply with subsection 1 of this section by:

(1) Designating one of the states in which the employer has employees as the designated state that such employer shall transmit the reports; and

(2) Notifying the secretary of Health and Human Services of such designation.

288.050. 1. Notwithstanding the other provisions of this law, a claimant shall be disqualified for waiting week credit or benefits until after the claimant has earned wages for work insured pursuant to the unemployment compensation laws of any state equal to ten times the claimant's weekly benefit amount if the deputy finds:

(1) That the claimant has left work voluntarily without good cause attributable to such work or to the claimant's employer; except that the claimant shall not be disqualified:

(a) If the deputy finds the claimant quit such work for the purpose of accepting a more remunerative job which the claimant did accept and earn some wages therein;

(b) If the claimant quit temporary work to return to such claimant's regular employer; or

(c) If the deputy finds the individual quit work, which would have been determined not suitable in accordance with paragraphs (a) and (b) of subdivision (3) of this subsection, within twenty-eight calendar days of the first day worked; or

(d) As to initial claims filed after December 31, 1988, if the claimant presents evidence supported by competent medical proof that she was forced to leave her work because of pregnancy, notified her employer of such necessity as soon as practical under the circumstances, and returned to that employer and offered her services to that employer as soon as she was physically able to return to work, as certified by a licensed and practicing physician, but in no event later than ninety days after the termination of the pregnancy. An employee shall have been employed for at least one year with the same employer before she may be provided benefits pursuant to the provisions of this paragraph;

(2) That the claimant has retired pursuant to the terms of a labor agreement between the claimant's employer and a union duly elected by the employees as their official representative or in accordance with an established policy of the claimant's employer; or

(3) That the claimant failed without good cause either to apply for available suitable work when so directed by the deputy, or to accept suitable work when offered the claimant, either through the division or directly by an employer by whom the individual was formerly employed, or to return to the individual's customary self-employment, if any, when so directed by the deputy.

(a) In determining whether or not any work is suitable for an individual, the division shall consider, among other factors and in addition to those enumerated in paragraph (b) of

this subdivision, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training, the individual's experience and prior earnings, the individual's length of unemployment, the individual's prospects for securing work in the individual's customary occupation, the distance of available work from the individual's residence and the individual's prospect of obtaining local work; except that, if an individual has moved from the locality in which the individual actually resided when such individual was last employed to a place where there is less probability of the individual's employment at such individual's usual type of work and which is more distant from or otherwise less accessible to the community in which the individual was last employed, work offered by the individual's most recent employer if similar to that which such individual performed in such individual's last employment and at wages, hours, and working conditions which are substantially similar to those prevailing for similar work in such community, or any work which the individual is capable of performing at the wages prevailing for such work in the locality to which the individual has moved, if not hazardous to such individual's health, safety or morals, shall be deemed suitable for the individual;

(b) Notwithstanding any other provisions of this law, no work shall be deemed suitable and benefits shall not be denied pursuant to this law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

b. If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

2. Notwithstanding the other provisions of this law, if a deputy finds that a claimant has been discharged for misconduct connected with the claimant's work, such claimant, depending upon the seriousness of the misconduct as determined by the deputy according to the circumstances in each case, shall be disqualified for waiting week credit or benefits for not less than four nor more than sixteen weeks for which the claimant claims benefits and is otherwise eligible. In addition to the disqualification for benefits pursuant to this provision the division may in the more aggravated cases of misconduct, cancel all or any part of the individual's wage credits, which were established through the individual's employment by the employer who discharged such individual, according to the seriousness of the misconduct. A disqualification provided for pursuant to this subsection shall not apply to any week which occurs after the claimant has earned wages for work insured pursuant to the unemployment compensation laws of any state in an amount equal to eight times the claimant's weekly benefit amount.

3. A pattern of absenteeism or tardiness may constitute misconduct regardless of

whether the last incident alone which results in the discharge constitutes misconduct.

**4. A discharge relating to the failure to pass, or the refusal to take a test for a non-prescribed controlled substance, as defined by section 195.010, RSMo, administered by or at the request of the employer, shall be considered misconduct connected with the claimant's work. If a deputy finds that a claimant has been discharged pursuant to this subsection, such claimant shall be disqualified for waiting week credit or benefits for not less than six nor more than sixteen weeks for which the claimant claims benefits and is otherwise eligible. If the deputy finds that the claimant has been discharged by an employer for the failure to pass or the refusal to take an employer administered controlled substance test for a second or subsequent time, such claimant shall be disqualified for waiting week credit or benefits for twenty-six weeks for which the claimant claims benefits and is otherwise eligible. The presence of any non-prescribed controlled substance as shown by a test administered by a medical review officer shall be deemed competent evidence that the claimant was under the influence of such controlled substance at the time the test was administered. A controlled substance report certified by a medical review officer shall be admissible as evidence in any administrative hearing and shall not be deemed inadmissible on the basis of hearsay.**

**5. Notwithstanding the provisions of subsection 1 of this section, a claimant may not be determined to be disqualified for benefits because the claimant is in training approved pursuant to section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended), or because the claimant left work which was not "suitable employment" to enter such training. For the purposes of this subsection "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than eighty percent of the worker's average weekly wage as determined for the purposes of the Trade Act of 1974.**

**288.270. The provisions of the Wagner-Peyser Act (29 U.S.C.A. Sec. 49 et seq.), as amended, are hereby accepted by this state and the division of employment security is hereby designated and constituted the agency of this state for the purposes of said act. The division shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purposes of performing such functions as are within the purview of the Wagner-Peyser Act. Such departments, divisions, and agencies may contract with private entities for the purpose of providing employment and reemployment services.**

**288.385. 1. Except as otherwise specifically provided by law, it shall be unlawful for the director of the division of employment security, any officer, employee, agent, or deputy or former director, officer, employee, agent, or deputy**

of the division of employment security, any person engaged or retained by the division of employment security on an independent contract basis, any person to whom authorized or unauthorized disclosure is made by the division of employment security, or any person who lawfully or unlawfully inspects any report or return filed with the division of employment security or to whom a copy, an abstract or a portion of any report or return is furnished by the division of employment security to make known in any manner, to permit the inspection or use of or to divulge to anyone any information relative to any such report or return, any information obtained by an investigation conducted by the department in the discharge of official duty, or any information received by the director in cooperation with the United States or other states in the enforcement of the employment laws of this state. Such confidential information is limited to information received by the division in connection with the administration of the employment security laws of this state.

2. Nothing in this section shall be construed to prohibit the disclosure of information, returns, reports, or facts shown thereby, as described in subsection 1 of this section, by any officer, clerk, or other employee of the division of employment security charged with the custody of such information:

(1) To an employee or the employee's duly authorized representative under regulations which the director of the division of employment security may prescribe;

(2) In any action or proceeding, civil, criminal or mixed, brought to enforce the employment security laws of this state.

3. Any person violating any provision of subsection 1 or 2 of this section shall, upon conviction, be guilty of a class D felony.

288.395. Any person receiving benefits by perpetrating a fraud or misrepresentation pursuant to this chapter for which a penalty has not herein been specifically provided, shall be guilty of a class A misdemeanor and, in addition, shall be liable to this state for a civil penalty not to exceed ten thousand dollars or double the value of the fraud, whichever is greater. Any person who has previously pled guilty to or has been found guilty of perpetrating a fraud or misrepresentation pursuant to this chapter and who subsequently violated any such provisions shall be guilty of a class D felony.